APPENDIX

Pertinent provisions of the Emergency Price Control Act of 1942, c. 26, 56 Stat. 23, as amended by the Stabilization Extension Act of 1944, Public Law 383, 78th Cong., 2d Sess.

SEC. 4. (a) It shall be unlawful, regardless of any contract, agreement, lease, or other obligation heretofore or hereafter entered into, for any person to sell or deliver any commodity, or in the course of trade or business to buy or receive any commodity, or to demand or receive any rent for any defense-area housing accommodations, or otherwise to do or omit to do any act, in violation of any regulation or order under section 2, or of any price schedule effective in accordance with the provisions of section 206, or of any regulation, order, or requirement under section 202 (b) or section 205 (f), or to offer, solicit, attempt, or agree to do any of the foregoing.

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SEC. 201. (a) * * * The Administrator may, subject to the civil-service laws, appoint such employees as he deems necessary in order to carry out his functions and duties under this Act, and shall fix their compensation in accordance with the Classification Act of 1923, as amended. The Administrator may utilize the services of Federal, State, and local agencies and may utilize and establish such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from

time to time be needed. Attorneys appointed under this section may appear for and represent the Administrator in any case in any court. * * *

(b) The principal office of the Administrator shall be in the District of Columbia, but he or any duly authorized representative may exercise any or all of his powers in any place. * * *

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(d) The Administrator may, from time to time, issue such regulations and orders as he may deem necessary or proper in order to carry out the purposes and provisions of this Act.

* * * * *

SEC. 203. (a) At any time after the issuance of any regulation or order under section 2, or in the case of a price schedule, at any time after the effective date thereof specified in section 206, any person subject to any provision of such regulation, order, or price schedule may, in accordance with regulations to be prescribed by the Administrator, file a protest specifically setting forth objections to any such provision and affidavits or other written evidence in support of such objections. Statements in support of any such regulation, order, or price schedule may be received and incorporated in the transcript of the proceedings at such times and in accordance with such regulations as may be prescribed by the Administrator. Within a reasonable time after the filing of any protest under this subsection, but in no event more than thirty days after such filing, the Administrator shall either grant or deny such protest in whole or in part, notice such protest for hearing, or provide an opportunity to present further

evidence in connection therewith. In the event that the Administrator denies any such protest in whole or in part, he shall inform the protestant of the grounds upon which such decision is based, and of any economic data and other facts of which the Administrator has taken official notice.

* * * * *

(d) Any protest filed under this section shall be granted or denied by the Administrator, or granted in part and the remainder of it denied, within a reasonable time after it is filed. Any protestant who is aggrieved by undue delay on the part of the Administrator in disposing of his protest may petition the Emergency Court of Appeals, created pursuant to section 204, for relief; and such court shall have jurisdiction by appropriate order to require the Administrator to dispose of such protest within such time as may be fixed by the court. If the Administrator does not act finally within the time fixed by the court, the protest shall be deemed to be denied at the expiration of that period.

SEC. 204 (a). Any person who is aggrieved by the denial or partial denial of his protest may, within thirty days after such denial, file a complaint with the Emergency Court of Appeals, created pursuant to subsection (c), specifying his objections and praying that the regulation, order, or price schedule protested be enjoined or set aside in whole or in part. A copy of such complaint shall forthwith be served on the Administrator, who shall certify and file with such court a transcript of such portions of the proceedings in connection with the protest as are material under the complaint. Such transcript shall include a

statement setting forth, so far as practicable, the economic data and other facts of which the Administrator has taken official notice. Upon the filing of such complaint the court shall have exclusive jurisdiction to set aside such regulation, order, or price schedule, in whole or in part, to dismiss the complaint, or to remand the proceeding: *Provided,* That the regulation, order, or price schedule may be modified or rescinded by the Administrator at any time notwithstanding the pendency of such complaint. No objection to such regulation, order, or price schedule, and no evidence in support of any objection thereto, shall be considered by the court, unless such objection shall have been set forth by the complainant in the protest or such evidence shall be contained in the transcript. If application is made to the court by either party for leave to introduce additional evidence which was either offered to the Administrator and not admitted, or which could not reasonably have been offered to the Administrator or included by the Administrator in such proceedings, and the court determines that such evidence should be admitted, the court shall order the evidence to be presented to the Administrator. The Administrator shall promptly receive the same, and such other evidence as he deems necessary or proper, and thereupon he shall certify and file with the court a transcript thereof and any modification made in the regulation, order, or price schedule as a result thereof; except that on request by the Administrator, any such evidence shall be presented directly to the court.

* * * * *

(d) Within thirty days after entry of a judgment or order, interlocutory or final, by the Emergency Court of Appeals, a petition for a writ of certiorari may be filed in the Supreme Court of the United States, and thereupon the judgment or order shall be subject to review by the Supreme Court in the same manner as a judgment of a circuit court of appeals as provided in section 240 of the Judicial Code, as amended (U. S. C., 1934 edition, title 28, sec. 347). The Supreme Court shall advance on the docket and expedite the disposition of all causes filed therein pursuant to this subsection. The Emergency Court of Appeals, and the Supreme Court upon review of judgments and orders of the Emergency Court of Appeals, shall have exclusive jurisdiction to determine the validity of any regulation or order issued under section 2, of any price schedule effective in accordance with the provisions of section 206, and of any provision of any such regulation, order, or price schedule. Except as provided in this section, no court, Federal, State, or Territorial, shall have jurisdiction or power to consider the validity of any such regulation, order, or price schedule, or to stay, restrain, enjoin, or set aside, in whole or in part, any provision of this Act authorizing the issuance of such regulations or orders, or making effective any such price schedule, or any provision of any such regulation, order, or price schedule, or to restrain or enjoin the enforcement of any such provision.

* * * * *

SEC. 205. (e) If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum

price or maximum prices, the person who buys such commodity for use or consumption other than in the course of trade or business may, within one year from the date of the occurrence of the violation, except as hereinafter provided, bring an action against the seller on account of the overcharge. In such action, the seller shall be liable for reasonable attorney's fees and costs as determined by the court, plus whichever of the following sums is the greater: (1) Such amount not more than three times the amount of the overcharge, or the overcharges, upon which the action is based as the court in its discretion may determine, or (2) an amount not less than $25 nor more than $50, as the court in its discretion may determine: *Provided, however,* That such amount shall be the amount of the overcharge or overcharges or $25, whichever is greater, if the defendant proves that the violation of the regulation, order, or price schedule in question was neither wilfull nor the result of failure to take practicable precautions against the occurrence of the violations. For the purposes of this section the payment or receipt of rent for defense-area housing accommodations shall be deemed the buying or selling of a commodity, as the case may be; and the word "overcharge" shall mean the amount by which the consideration exceeds the applicable maximum price. If any person selling a commodity violates a regulation, order, or price schedule prescribing a maximum price or maximum prices, and the buyer either fails to institute an action under this subsection within thirty days from the date of the occurrence of the violation or is not entitled for any

reason to bring the action, the Administrator may institute such action on behalf of the United States within such one-year period. If such action is instituted by the Administrator, the buyer shall thereafter be barred from bringing an action for the same violation or violations. Any action, under this subsection by either the buyer or the Administrator, as the case may be, may be brought in any court of competent jurisdiction. A judgment in an action for damages under this subsection shall be a bar to the recovery under this subsection of any damages in any other action against the same seller on account of sales made to the same purchaser prior to the institution of the action in which such judgment was rendered.

(c) The amendment made by subsection (b), insofar as it relates to actions by buyers or actions which may be brought by the Administrator only after the buyer has failed to institute an action within thirty days from the occurrence of the violation, shall be applicable only with respect to violations occurring after the date of enactment or this Act. In other cases, such amendment shall be applicable with respect to proceedings pending on the date of enactment of this Act and with respect to proceedings instituted thereafter.

* * * * *

SEC. 302 (c) The term "commodity" means commodities, articles, products, and materials (except materials furnished for publication by any press association or feature service, books, magazines, motion pictures, periodicals and newspapers, other than as waste or scrap), and it also includes services rendered otherwise than as

an employee in connection with the processing, distribution, storage, installation, repair, or negotiation of purchases or sales of a commodity, or in connection with the operation of any service establishment for the servicing of a commodity: *Provided,* That nothing in this Act shall be construed to authorize the regulation of (1) compensation paid by an employer to any of his employees, or (2) rates charged by any common carrier or other public utility, or (3) rates charged by any person engaged in the business of selling or underwriting insurance, or (4) rates charged by any person engaged in the business of operating or publishing a newspaper, periodical, or magazine, or operating a radio-broadcasting station, a motion-picture or other theater enterprise, or outdoor advertising facilities, or (5) rates charged for any professional services.

* * * * *

Pertinent provisions of the regulations and orders of the Office of Price Administration.

General Maximum Price Regulation (7 F. R. 3153, 3330)

SEC. 1 [§ 1499.1] *Prohibition against dealing in commodities or services above maximum prices.* On and after the effective date of this Regulation, regardless of any contract or other obligation:

(a) No person shall sell or deliver any commodity, and no person shall sell or supply any service, at a price higher than the maximum price permitted by this Regulation.

* * * * *

SEC. 2 [§1499.2] *Maximum prices for commodities and services: general provi-*

sions. Except as otherwise provided in this Regulation, the seller's maximum price for any commodity or service shall be:

(a) The highest price charged by the seller during March 1942:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it; or

(b) If the seller's maximum price cannot be determined under paragraph (a), the highest price charged during March 1942 by the most closely competitive seller of the same class:

(1) For the same commodity or service; or

(2) If no charge was made for the same commodity or service, for the similar commodity or service most nearly like it.

Highest Price Charged during March 1942

For the purposes of this General Maximum Price Regulation, the highest price charged by a seller during March 1942 shall be:

(a) The highest price which the seller charged for a commodity delivered or service supplied by him during March 1942 to a purchaser of the same class; or

(b) If the seller made no such delivery or supplied no such service during March 1942, his highest offering price for delivery or supply during that month to a purchaser of the same class; or

(c) If the seller made no such delivery or supplied no such service and had no such offering price to a purchaser of the same class, the highest price charged by the seller

during March 1942 to a purchaser of a different class, adjusted to reflect the seller's customary differential between the two classes of purchasers.

* * * * *

No seller shall evade any of the provisions of this General Maximum Price Regulation by changing his customary allowances, discounts or other price differentials.

* * * * *

SEC. 20 [§1499.20] *Definitions and explanations.* This General Maximum Price Regulation, and the terms appearing therein, unless the context otherwise requires, shall be construed as follows:

* * * * *

(k) *Purchaser of the Same Class.* "Purchaser of the same class" refers to the practice adopted by the seller in setting different prices for commodities or services for sales to different purchasers or kinds of purchasers (for example, manufacturer, wholesaler, jobber, retailer, government agency, public institution, individual consumer) or for purchasers located in different areas or for different quantities or grades or under different conditions of sale.

* * * * *

(t) *Service.* "Service" includes any service rendered or supplied, otherwise than as an employee, in connection with the processing, distribution, storage, installation, repair, or negotiation of purchase or sale of a commodity, and generally, without limiting the foregoing, all services which preserve or add to the value or utility of a commodity.

* * * * *

Maximum Price Regulation No. 165, as Amended (Services) (7 F. R. 6428, 8506)

SECTION 1499.101 *Prohibition against dealing in services above maximum prices.* On and after July 1, 1942, regardless of any contract or other obligation:

(a) *Sales.* No "person" shall "sell" or supply any of the "services" set forth in paragraph (c) of this section at a price higher than the maximum price permitted by this Maximum Price Regulation No. 165, as amended.

* * * * *

(c) *Services covered.* This Maximum Price Regulation No. 165 as amended shall apply to all rates and charges for the following services, except when such services are rendered as an employee:

* * * * *

(65) Logging and production of logs, bolts, cordwood and other primary forest products, (including all operations in connection therewith, such as felling, bucking, cutting, skidding, yarding, peeling, loading, reloading, booming and rafting, grading, scaling, et cetera).

SEC. 1499.102 *Maximum prices for services: General provisions.* Except as otherwise provided in Maximum Price Regulation 165, as amended, the seller's maximum price for any service to which this Maximum Price Regulation No. 165, as amended, is applicable shall be:

(a) The highest price charged during March 1942 (as defined in this section) by the seller—

(1) For the same service; or

(2) If no charge was made for the same service, for the similar service most nearly like it;

* * * * *

Highest Price Charged During March 1942

For the purposes of this Maximum Price Regulation No. 165, as amended, the highest price charged by a seller during March 1942 shall be:

(1) The highest price which the seller charged for a service "supplied" by him during March 1942; or

(2) If the seller supplied no such service during March 1942, his highest "offering price" for supply during that month:

The "highest price charged during March 1942" shall be the highest price charged by the seller during such month to a "purchaser of the same class":

* * * * *

No seller shall evade any of the provisions of this Maximum Price Regulation No. 165, as amended, by changing his customary allowances, discounts, or other price differentials.

* * * * *

§ 1499.116 *Definitions and explanations.* (a) When used in Maximum Price Regulation No. 165 as amended:

* * * * *

(10) "Pruchaser of the same class" refers to the practice adopted by the seller in setting different prices for services for sales to different purchasers or kinds of purchasers (for example, wholesale, jobber, retailer, government agency, public institution, individual consumer) or for purchasers located in different areas or for

different quantities or grades or under different conditions of sale:

* * * * *

(17) "Service" shall include any and all of those services listed in Sec. 1499.101 (c), and shall include any commodity or article sold in connection with the sale of a particular service.

REVISED GENERAL ORDER NO. 3 OF JUNE 10, 1943, 8 F. R. 8027

General Order No. 3 is revised and amended to read as follows:

Pursuant to the authority conferred upon the Price Administrator by the Emergency Price Control Act of 1942, as amended, and Executive Orders 9125, 9250, 9280, and 9328, the following order is prescribed:

(a) Institution of and intervention in civil proceedings. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, the Regional Attorneys or the Acting Regional Attorneys, and the Regional Enforcement Attorneys or the Acting Regional Enforcement Attorneys, are each authorized to institute and intervene in appropriate civil actions or proceedings, in the name of the Price Administrator; and any of them may authorize any other attorney employed by the Office of Price Administration to institute or intervene in appropriate civil actions or proceedings in the name of the Price Administrator. Except as herein provided, no other officer or employee of the Office of Price Administration, whether employed in the principal office in Washington, D. C., or in any regional or field office, has au-

thority to institute or intervene in proceedings on behalf of the Price Administrator.

(b) Service of process upon the Administrator. Service of process upon the Price Administrator may be made by serving him personally, or by leaving a copy thereof at the Office of the Secretary, Office of Price Administration, Washington, D. C. No other officer or employee of the Office of Price Administration, whether employed in the principal office in Washington, D. C., or in any regional or field office, is authorized to accept service of process on behalf of the Price Administrator or enter his appearance in any action or proceeding, except as herein provided.

(c) Appearance for the Administrator in defensive suits. The General Counsel or the Acting General Counsel, the Director of the Enforcement Division or the Acting Director, and the Assistant General Counsel or the Acting Assistant General Counsel in charge of the Court Review, Research and Opinion Division are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any action or proceeding instituted against the Price Administrator or the Office of Price Administration in the Emergency Court of Appeals and in proceedings for the review of determinations of the Emergency Court of Appeals in the Supreme Court; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any such action or proceedings. The General Counsel or the Acting General Counsel, and the Director of the Enforce-

ment Division or the Acting Director are each authorized to appear for and represent the Price Administrator or the Office of Price Administration in any other action or proceeding instituted against the Price Administrator or the Office of Price Administration; and any of them may specifically authorize any attorney employed by the Office of Price Administration to appear for and represent the Price Administrator or the Office of Price Administration in any other such action or proceeding.

Issued and effective this 10th day of June 1943.

GEORGE J. BURKE,
Acting Administrator.

SECOND REVISED GENERAL ORDER No. 3, 9 F. R. 11137

Revised General Order No. 3 is revised and amended to read as follows:

* * * * *

(a) *Institution of and intervention in civil proceedings.* * * *

The Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by an attorney-at-law regularly admitted to practice in any state, territory, or district, purporting to act in the name of or on behalf of the Price Administrator in any suit, action or proceeding heretofore at any time brought or purporting to be brought by the Price Administrator in any court of the United States or of any state, territory or district, said ratification, approval and confirmation to have the same force and effect as if specific authority to institute and conduct such suit, action or proceeding had been expressly granted by the Price Administrator to such attorney immediately prior

to the commencement of such suit, action or proceeding. Without in any manner limiting the generality of the foregoing, the Price Administrator does hereby ratify, approve and confirm all acts done and all proceedings had or taken by any such attorney in instituting, maintaining and prosecuting any and all suits, actions and proceedings of whatsoever nature heretofore at any time brought or purporting to be brought in the name of the Price Administrator under the provisions of section 205 (a) of the Emergency Price Control Act of 1942 to enjoin violations of said act or any order, schedule or regulation thereunder, or under the provisions of section 205 (e) of said act as originally enacted, or as amended, to enforce any liability created by said section, or under the provisions of section 205 (f) of said act to revoke the license of any person licensed under said act, or under section 202 of said act to enforce compliance or obedience to any subpoena, order or requirement issued or purporting to be issued under said section, or under subdivision 6 of subsection (a) of section 2 of the Act of June 28, 1940 (54 Stat. 676) as amended, to enforce compliance with, or obedience to, or to enjoin violations of, or to enforce any liability or duty created by, any rule, regulation, order, or subpoena issued under said subsection (a).

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Issued and effective this 7th day of September 1944.

CHESTER BOWLES,
Administrator.

U. S. GOVERNMENT PRINTING OFFICE: 1944